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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER

POLLIPOFF, STEVEN B

ART UNIT PAPER NUMBER

3728

DATE MAILED: 08/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/726,256	Applicant(s) MCDONALD ET AL.	
	Examiner Steven B. Pollicoff	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-41 and 43-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-41 and 43-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/18/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Allowable Subject Matter

The indicated allowability of claims 36,38-41 and 45 is withdrawn in view of the newly discovered reference(s) to Warner (US Pat 5,641,068). Rejections based on the newly cited reference(s) follow. Claims 33-41 and 43-46 are currently pending in this application.

Response to Arguments

Applicant's arguments filed 5/18/06 have been fully considered but they are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the intended nesting arrangement between frame members) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant argues that neither Ridgeway (US Pat 4,852,73) nor Lofgren (US Pat 5,668,506) teach the nesting engagement of the two rigid frames. Applicant also defines "nest" as "a set of objects of graduated size that can be stacked together, each fitting within a larger one." In as much as applicant defines the nesting engagement in the claims all that is required is that the frame members nest with the retention members. Therefore, both Ridgeway and Lofgren teach frame members configured to nest with retention members within a box. In other words, the frame members and retentions members (objects of graduated size) are stacked together fitting within a larger object (i.e. nested within the box).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 33-41 and 43-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Warner (US Pat 5,641,068).

With respect to claims 33,35-38 and 43-45, Warner discloses a packaging assembly (Warner Fig 2) comprising a first frame member (Fig 2 ref 20 the lower square portion not including the upward projections) having first and second free edges, a second frame member (22, the upper square portion not including the downward projections) having third and fourth free edges, a first retention member (Fig 2 upward projections of the first frame member 20 that interact with product 21) extending between the first and second free edges, a second retention member (Fig 2 downward projections of the second frame member 22 that interact with product 21) extending between the third and fourth free edges, the first and second frame members being configured to nest with the first and second retention members facing each other (Fig 3 generally; see also column 5, lines 15-17), wherein the first frame member comprises first and second peripherally extending structures (Fig 2 upward projections along the outer periphery of first frame member 20) supporting the first and second free edges, respectively, the second frame member comprising third and fourth peripherally extending structures (Fig 2 downward projections along the outer periphery of second

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frame member 22) supporting the third and fourth free edges, respectively, and wherein the assembly additionally comprises tapered portions (Fig 2 upward projections of first frame member 20 are tapered) formed on the opposite ends of each of the first and second free edges, and at least first and second inclined walls (Fig 2 downward projections of second frame member 22 have inclined walls) forming a portion of the third and fourth peripherally extending structures, respectively, and wherein the tapered portions extend along a first angle of inclination, the first and second inclined walls extending along a second angle of inclination that is approximately equal to the first angle of inclination and configured to nest with each other (Fig 3).

With respect to claim 34, Warner discloses that the retention members are resilient (column 4, lines 38-39) and in as much as applicant has defined the frames as being rigid, Warner discloses that the frame portions maintain their shape when packaged (i.e. thus making the frame portions substantially rigid).

With respect to claim 39, Warner discloses that at least one of the tapered portions and the inclined walls are configured such that the first and second retention members are deflected inwardly (i.e. inwardly as in downwardly or upwardly into the direction of the frame portion) (column 4, lines 38-39) when the tapered portions and the inclined walls are nested (column 5, lines 13-17).

With respect to claims 40-41, Warner discloses first and second recessed areas (Fig 2 see recessed areas at base of upward and downward projections of frame members 20 and 22), wherein the first and second retention members are deflected

toward the first and second recessed areas, respectively, when the tapered portions and the inclined walls are nested.

With respect to claim 46, Warner teaches that the first, second, third and fourth peripherally extending structures are triangular in cross section (Fig 2 generally).

Claims 33 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Ridgeway (U.S. Pat. No. 4,852,743).

As to claim 33, Ridgeway discloses a packaging assembly (Ridgeway Fig. 1) comprising a first frame member (3) having first and second free edges, a second frame member (9) having third and fourth free edges, a first retention member (7) extending between the first and second free edges (see corners of frame 3) and a second retention member (12) extending between the third and fourth free edges (see corners of frame 9) where the first and second frame members are configured to nest with the first and second retention members facing each other (Fig. 2).

As to claim 34, Ridgeway discloses that the first and second retention members are substantially resilient (Ridgeway Column 4, lines 11-19 and 34-36) and the first and second frame members are substantially rigid (Column 4, lines 6-9).

Claims 33-35,37,43,44 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Lofgren et al., (U.S. Pat. No. 5,669,506).

As to claim 33, Lofgren discloses a packaging assembly (Lofgren Fig. 1) comprising a first frame member (Fig. 5, end panel 14) having first and second free edges, a second frame member (end panel 14) having third and fourth free edges, a first retention member (16, top layer of supporting hammock shown) extending between

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the first and second free edges and second retention member (16, bottom layer of supporting hammock shown) extending between the third and fourth free edges where the first and second frame members are configured to nest with the first and second retention members facing each other (Fig. 1). The frame members can inherently nest with the first and second retention members facing each other in an outer container.

As to claims 34 and 42, Lofgren discloses that the first and second retention members are substantially resilient (Lofgren Column 2, lines 20-22) and the first and second frame members are substantially rigid (Column 2, lines 40-42).

As to claim 35, Lofgren discloses that the first frame member includes at least a first tapered portion extending from the first free edge (Fig. 5 where the free end corner of end panel/frame member 14 slopes down to base 12).

As to claim 37, Lofgren discloses that where the first and second free edges extend longitudinally, each of the first and second free edges include tapered portions disposed at opposite longitudinal ends thereof (Fig. 5 space between where the free end corners of end panel/frame member 14 meet the inclined surface extending down to base 12).

As to claim 43, Lofgren discloses that the first frame member comprises first and second peripherally extending structures supporting the first and second free edges (Fig. 5 left inclined surface extending from the free edges of frame 14 down to base 12) and that the second frame member comprises third and fourth peripherally extending structures supporting the third and fourth free edges (Fig. 5 right inclined surface extending from the free edges of frame 14 down to base 12).

As to claim 44, Lofgren discloses that tapered portions are formed on the opposite ends of each of the first and second free edges (Fig. 3 where panels 18 and 44 meet) and that at least first and second inclined walls form a portion of the third and fourth peripherally extending structures (Fig. 5).

As to claim 46, the first, second, third and fourth peripherally extending structures are triangular in cross section (Fig. 5).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Marconi (US Pat 5,954,203), Beauchamp et al., (US Pat 5,372,257) and Boardman et al., (US Pat 5,492,223) disclose packaging/loading trays that read on the present invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

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have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ABP
SBP

7/24/06



JILA M. MOHANDESI
PRIMARY EXAMINER